

KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 13, 2012

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on April 13, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Susan Gardner, Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MARCH 9, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Judge Chandler seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that at the end of the agenda, the Board will discuss budget issues.

Mr. Sipek reported that the Franklin Circuit Court issued an Opinion and Order affirming the Personnel Board's Final Order concerning *Thomas Stuart McCloy v. Transportation Cabinet and Personnel Board*, 2010-CI-1138.

Mr. Sipek stated that General Counsel Andy Crocker is on military leave and the office is handling what we need to in his absence.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that there was no significant impact to KRS Chapter 18A employees during the legislative session; however, the agencies were impacted by the budget.

Ms. Bevington stated that the annual days given to employees as a reward during annual evaluations are being loaded into the system. [Annual days are given to employees with either of the two highest ratings.] Employees will see the additional time credited in May 2012. Dr. Stevens asked Ms. Bevington how many employees qualify for the two annual days. Ms. Bevington was not sure, but would get the information.

Ms. Bevington announced that the Kentucky Human Resource Information System (KHRIS) has been in effect for one year and has been a large accomplishment for the Commonwealth.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

5. **ORAL ARGUMENTS**

A. Jason Blackburn v. Transportation Cabinet, Mary Holbrook, Darold Slone and Gregory Couch

Present for oral argument were counsel for Appellant, the Hon. Don Duff; and counsel for Appellee, Transportation Cabinet, the Hon. Ed Logan. [The Intervenor was not present.] After presenting oral arguments, the parties answered questions from the Board.

B. Kenneth Jones v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, Justice and Public Safety Cabinet, Department of Corrections, the Hon. Stafford Easterling. After presenting oral arguments, the parties answered questions from the Board.

C. Rhonda Watts v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Everett Hoffman; and counsel for Appellee, Cabinet for Health and Family Services, the Hon. Jennifer Wolsing. After presenting oral arguments, the parties answered questions from the Board.

6. **INVESTIGATIONS**

A. Request for Investigation of KET by James Witt, Jr., Patrick Wise,
Trasimond Soileau, Robert Pickering and Mark Holt
[Deferred from March]

Chairman Sapp moved discussion of the investigation to the end of the Agenda.

7. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:20 a.m.)

Dr. Stevens moved to return to open session. Mr. Gillis seconded and the motion carried 7-0. (12:30 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. Jason Blackburn v. Transportation Cabinet and Intervenors Mary Holbrook, Darold Slone and Gregory Couch

Mr. Blevins moved to note Appellant's exceptions, Appellee's response and oral argument, and to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-2, with Dr. Stevens and Ms. Gardner opposing.

- B. Kenneth Jones v. Justice and Public Safety Cabinet (Corrections)

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument, and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 7-0.

- C. Rhonda Watts v. Cabinet for Health and Family Services

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument, and to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 7-0.

- D. Devenna Bales v. Cabinet for Health and Family Services and Personnel Cabinet

Deferred from March

Ms. Gardner moved to note Appellee Personnel Cabinet's exceptions; Appellee Cabinet for Health and Family Services' exceptions; Appellant's response to Appellee Personnel Cabinet's exceptions; Appellant's response to Appellee Health and Family Services exceptions; Appellee Personnel Cabinet's response to exceptions of Appellee Cabinet for Health and Family Services and oral argument and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Ms. Gardner seconded and the motion carried 7-0.

- E. Mark A. Holt v. KET
- F. Robert Pickering v. KET
- G. Trasimond Soileau v. KET
- H. Patrick J. Wise v. KET
- I. James D. Witt, Jr. v. KET

Mr. Hutcheson moved to note [E., F., G., H. and I. *en bloc*] Appellant Holt's exceptions; Appellant Pickering's exceptions; Appellant Soileau's exceptions; Appellant Soileau's corrected and amended exceptions Appellant Wise's exceptions; Appellant Wise's corrected exceptions; Appellant Witt's exceptions; Appellee's Response to Exceptions; and oral arguments; to reject the hearing officer's recommended order and to accept the remand order, as attached to the minutes. Mr. Blevins seconded and the motion carried 7-0.

- J. Nathaniel Bebe v. Cabinet for Health and Family Services

Ms. Gardner moved to note Appellant's exceptions and Appellee's response (Appellee's request for oral argument denied as untimely) and to accept the recommended order sustaining the appeal to the extent of raising the Appellant's evaluation score. Dr. Stevens seconded and the motion carried 7-0.

- K. Joe Brosky v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

- L. Mark Overstreet v. Justice and Public Safety Cabinet (Juvenile Justice)

Mr. Gillis moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

- M. Rodney Crouch v. Justice and Public Safety Cabinet (Corrections)

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

N. Denise Graves v. Cabinet for Health and Family Services and Personnel Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

O. Charles Miller v. Department of Military Affairs

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent that Appellant's evaluation score was increased to "Good." Dr. Stevens seconded and the motion carried 7-0.

P. Bradley Wilson v. Transportation Cabinet

Dr. Stevens moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

Q. Shannon Bower v. Cabinet for Health and Family Services

R. Walter Hines v. Cabinet for Health and Family Services

S. Kelly Shortridge v. Energy and Environment Cabinet

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Dr. Stevens seconded and the motion carried 7-0.

9. WITHDRAWALS

Judge Chandler moved to consider the following withdrawals of appeals [A., B., D., E., F., G., H., I.] *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 7-0.

- A. Robert Atwood v. Justice and Public Safety Cabinet (Corrections) and Personnel Cabinet
- B. Glenda Carr v. Department of Veterans Affairs
- D. Jack Howard and Brad Holt v. Justice and Public Safety Cabinet (Corrections) (2 appeals)
- E. Christopher Kidd v. Cabinet for Health and Family Services
- F. Craig Mitchell v. Finance and Administration Cabinet
- G. Teudis Perez v. Cabinet for Health and Family Services
- H. Kristina Davis v. Transportation Cabinet
- I. Tracie Roark v. Cabinet for Health and Family Services (2 appeals)

Ms. Gardner moved to reject the withdrawal of appeal "C." Mr. Hutcheson seconded and the motion carried 7-0.

- C. Jennifer Combs v. Cabinet for Health and Family Services

10. SETTLEMENTS - None

11. OTHER

A. Investigation

Request for Investigation of KET by James Witt, Jr., Patrick Wise, Trasimond Soileau, Robert Pickering and Mark Holt **[Deferred from March]**

--Response of KET (Morgan Ransdell and Aaron Ament)

--Amended Response to Investigation from James D. Witt, Jr.

Mr. Sipek stated that since the Board remanded these five appeals for hearing, he recommended that the Board deny the request for investigation. He felt the hearing process would be adequate to hear the concerns of discrimination and/or retaliation and resolve these matters.

Judge Chandler moved to deny the request for investigation of KET. Mr. Hutcheson seconded and the motion carried 7-0.

B. Budget

Mr. Sipek advised that the Board is in the 4th quarter of the fiscal year with less money than anticipated due to budget cuts. The Board has enough to get by for operating expenses, but no money left over for Hearing Officers. The State Budget Office is looking for a solution.

Mr. Sipek stated that he reviewed the figures going on at the present time. Currently, there are approximately sixteen hearings that have been heard and are ready for the hearing officer to write a recommended order.

There are approximately fifty cases scheduled for an evidentiary hearing. Sixteen of these are dismissals. To finish cases and hear dismissals, the cost is estimated at about \$30,000 which has been relayed to the Budget Office. Appeals scheduled for an evidentiary hearing (not involving dismissals) will probably be rescheduled for the next fiscal year. Dismissals are a top priority, since they involve back pay for the agency and lost income for the Appellant. Mr. Sipek stated that at this point the Board is waiting to hear back from the Budget Office. Mr. Sipek stated that if the Board does not get any financial relief, he and Mr. Crocker will be the only hearing officers available.

Mr. Blevins said to postpone appeals is not good business for the state or the parties involved. He suggested that the Board contact the Governor's office or whomever for more funds to complete the fiscal year. Mr. Gillis stated that the Chairman has authority to request additional funds, if necessary.

Mr. Sipek stated that a special assessment can be requested; however, approval must come from both the Budget Director and the Secretary of the Finance Cabinet. Special assessments can be requested by the Chairman of the Board as a result of increased workloads or for other reasons in the best interest of the state merit system. Mr. Sipek recommended that the Board await a response to the request for additional funds from the Budget Analyst before requesting a special assessment.

Mr. Blevins stated that he would support offers for additional funds. Chairman Sapp stated the state is taking severe action regarding funds, and the Personnel Board is not the only Board facing similar circumstances. Chairman Sapp further stated that the staff is doing a great job requesting additional funds and endorses the staff's efforts. Chairman Sapp advised Mr. Sipek to update the Board members before the next meeting of the status of the request for additional funds.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Blevins moved to adjourn. Dr. Stevens seconded and the motion carried 7-0. (1:00 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Susan Gardner, Member

Tommy Chandler, Member

Donald W. Blevins, Member